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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,753	12/30/2003	Michael Paul Wagner	1301-026	2695
26108	7590	01/27/2006	EXAMINER	
DANIELS DANIELS & VERDONIK, P.A. SUITE 200 GENERATION PLAZA 1822 N.C. HIGHWAY 54 EAST DURHAM, NC 27713			MOAZZAMI, NASSER G	
			ART UNIT	PAPER NUMBER
			2187	

DATE MAILED: 01/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/748,753

Applicant(s)

WAGNER ET AL.

Examiner

Nasser G. Moazzami

Art Unit

2187

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☒ Claim(s) 14-18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 02/23/2006.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

1. Information Disclosure Statement submitted by applicant on 02/23/2005 has been considered by examiner. See attached PTO-1449.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, Line 13 recites the limitation "said session." it is not clear whether it is referring to the first or second session. For the purpose of the examination, examiner considers this to be the second session. Claims 2-10 are rejected for being dependent upon rejected claim 1.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent

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and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1,4, and 11-12 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, and 10-11 of copending Application No. 10/126,711.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows:

Claim 1 is unpatentable over claim 1 of the copending application. The copending application discloses a method of creating point-in-time view of data on a disk, comprising: initiating from a host, a first and a second sessions of writing data to a disk; creating and storing entries in an array on the disk which identify where the data is written during the first and second sessions; copying data in any portion of the disk corresponding to said first session which is to be affected by a write operation by said at

second session of writing data. The copending application is silent as to invalidating the entries in the array when one of a new first and second session is initiated. To invalidate the entries when a new first and second sessions is initiated would have been obvious to one of ordinary skill in the data reconstruction art.

Claim 4 is unpatentable over claim 2 of the copending application as applied to claim 1 above.

Claims 11-12 are unpatentable over claims 10-11 of the copending application as applied to claims 1, and 4 above.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-4, 6-8, and 10-13 are rejected under 35 U.S.C. 102(e) as being anticipated by Selkirk (US Patent Publication No. 2003/0005248).

As per claim 1, Selkirk discloses a method of creating point-in-time view of data on a disk, comprising: initiating from a host, a first session of writing data to a disk which affects a portion of the disk; initiating at least one second session of writing data to a disk at a time different from initiation of the first session, with said at least one second session of writing data affecting a portion of the disk **[first and second write operations (page 12, paragraphs 161-165)]**; creating and storing entries in an array on the disk which identify where data written to the disk during first and second sessions are located **[pointers in the table referencing original and copy data (page 12, paragraphs 161-165)]**; copying data in any portion of the disk corresponding to said first session which is to be affected by a write operation by said at least one second session **[copying old data]**; and invalidating said entries in said array for said at least one of said first and second session when at least one of a new first session and a new second session is initiated **[generating new pointers]**.

As per claims 2-3, and 10, Selkirk discloses a session sequence number being assigned to a session when a session is initiated, said sequence number is stored in said array, and as input and output operations are processed, the session sequence number is stored in a chunk allocation block **[it is inherent in the art that there has to be a sequence number, since there are different data sets (original and copy of the data)]**.

As per claim 4, Selkirk discloses that the second session write operation is copied from a source disk to be stored at a cache disk **[cache memory 208 (Fig. 2)]**.

As per claim 6, Sekirk discloses that sessions are assigned specific slots in the array, and wherein when a new session is to replace a corresponding prior session; it is assigned to the same slot in the array as the prior session **[fixed mapping (paragraph 80)]**.

As per claim 7, Sekirk discloses that said sessions are assigned session ID's, and wherein the session ID of a prior invalidated session is different from the session ID of a later corresponding session assigned to its same slot in the array **[changing pointers as the mapping changes (paragraph 86)]**.

As per claim 8, Sekirk discloses a direct linear map pointing to sections of the disk where data is located for each session **[pointers table and mapping of the entries]**.

As per claims 11-13, claims 11-13 encompass the same scope of the invention as those of claims 1-4, 6-8, and 10. Therefore, claims 11-13 are rejected for the same reasons as stated above with respect to claims 1-4, 6-8, and 10.

Allowable Subject Matter

8. Claims 5, 9, and 14-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten to overcome the rejection under 112, first paragraph and rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nasser G. Moazzami whose telephone number is (571) 272-4195. The examiner can normally be reached on 7:00AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Sparks can be reached on (571) 272-4201. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


NASSER MOAZZAMI
PRIMARY EXAMINER

01/23/2006